IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

CRIMINAL REVISION APPLICATION NO. 75 OF 2007

Shamji Hirji Shah. ... Applicant.

V/s.

Dhanji Velji Gala
and another. ... Respondents.

Vinit Jain i/b. Girish Kulkarni
for the applicant.

Manish Bohra i/b. A.S.Khan & Associates
for respondent No.1.

K.V.Saste, APP for respondent No.2-State.

CORAM: V.C.DAGA, J.

DATED: 4th July 2007.

P.C.:

. This revision is directed against the order dated 19th June, 2006 passed in Criminal Case No.181/S/2004 by the Metropolitan Magistrate, 12th Court, Bandra, Mumbai contending that the impugned order would result in protracting litigation as such it should be set aside.

2. During the course of hearing, both parties agreed that by consent of parties impugned order be set aside dispensing with the reasons in support thereof and the matter may be remitted back to the trial Court with direction to record evidence of both parties and after following provision of section 73 of

the Evidence Act, if the Court trying the complaint feels that for appreciation of evidence opinion of the handwriting expert is necessary, then the Court should direct examination of documents by the handwriting expert at the cost of the accused/ respondents herein with liberty to both parties to cross-examine the handwriting expert and decide the matter on its own merits in accordance with law.

3. In the above view of the matter, the impugned order is set aside. Proceedings are remitted back to the trial Court with direction to proceed with the trial and after recording evidence of the parties after following provision of section 73 of the Evidence Act, if the trial Court feels it necessary to have the opinion of the handwriting expert, then the trial Court is directed to seek opinion of the handwriting expert at the cost of the accused persons and should examine him as a Court witness permitting both parties to cross-examine him and then proceed to decide the complaint on its own merits. All rival contentions in this behalf are kept open. Needless to mention that this order shall not prejudice the rights of either of the parties to the complaint.

4. Revision application is disposed of in terms of this order with no order as to costs.

JUDGE